

REMARKS

This communication is in response to the non-final Office Action issued January 24, 2008. The Examiner rejected claims 1-22 under 35 U.S.C. § 103 in view of combinations of WIPO Publication No. WO 02/091373 to Kim ("Kim") and U.S. Patent No. 5,321,242 to Heath, Jr. ("Heath").

Attorney Docket Number

Kindly change the attorney docket no. to be 4247070002.

Applicant-Initiated Amendments

The Applicants have made some minor amendments to the specification to clarify obvious typographical or grammatical errors. For example, several of the claims have been amended to correct such informalities as misplaced colons and to replace "further comprising" clauses with "wherein" clauses where appropriate. Furthermore, the dependencies of claims 16 and 20 have been corrected. No new matter is added.

Claim Rejections Under 35 U.S.C. § 103

In sections 1-24 of the Office Action, the Examiner rejected claims 1-22 under 35 U.S.C. § 103 in view of combinations of Kim and Heath. Specifically, the Examiner rejected claims 1-11 in view of Kim modified by Heath and claims 12-22 in view of Heath modified by Kim.

It is well settled that for a rejection of a claim under 35 U.S.C. § 103 to be proper, each and every recitation of the claim must be present in the cited reference(s). See, for example, MPEP § 2143.03. It is also well settled that for a rejection of a claim under 35 U.S.C. § 103 to be proper, there must be some suggestion or motivation to modify a reference or combine reference teachings. See, for example, MPEP § 2143.01. When so modifying a reference, the

proposed modification cannot render the prior art unsatisfactory for its intended purpose or change the principle of operation of a reference. See, for example, MPEP § 2143.01. The modification must support a reasonable expectation of success with some degree of predictability. See, for example, MPEP § 2143.02. Finally, the source of the suggestion or motivation to modify a reference cannot be the Applicants' own disclosure. See, for example, MPEP § 2143. For at least the reasons stated below, the Examiner's rejections of the claims do not satisfy these burdens.

Kim appears to disclose a system whereby line breaks, short circuits, and the presence of noise in a transmission line may be determined from a remote location, allowing the user to turn off a tap port connected to the transmission line. As noted by the Examiner, however, Kim makes no mention nor suggestion of capturing other data, such as which if any technician accessed a tap and what if any services the technician performed. Moreover, it is not clear how such functioning would be associated with the described system of Kim.

Heath appears to disclose a system for allowing controlled access to automated teller machines and pay telephones. The Heath system requires a technician to have a "portable computer terminal" that is preprogrammed with information related to the various ATM's and pay telephones, as well as identifying information for the technician to whom the portable terminal has been assigned. If the technician correctly enters a personal identification number and connects the portable terminal to the correct device requiring servicing, the portable terminal grants access to the device. The portable terminal may generate a record of such granting of access, which can later be uploaded by the technician to a database at the dispatch center. The Heath system, by design, does not provide direct communication between the service location and the dispatch center.

There are several problems with the rejections proffered by the Examiner. Initially, it is noted that Kim is directed to determining whether a communication line is functioning properly and that Heath is directed to granted controlled access. Thus, the references are directed to different subject matter and therefore are not analogous. The references may not properly be combined.

Moreover, the proffered rejections fail because the references do not disclose nor suggest each of the recited claim elements. For example, there is no discussion of transmitting the technician data to a remote location. Contrarily, Heath merely suggests that the portable terminal may collect information that access was granted, but in any event it is up to the user/technician to later upload this data to the main dispatch computer where it can be used. This is quite different than the instantly disclosed and claimed invention, according to which access to and the services performed at a cable television tap are *monitored* and information regarding the same is transmitted directly to the monitoring site without need for the technician to provide the collected information. If the technician must upload the access information, there can be no assurance that the access data will be passed on to the monitoring site. The situation is even more bleak when considering unauthorized access, for which it is safe to assume no voluntary reporting would take place and thus, according to the proffered combination, no data captured. Thus, the combined "system" proposed by the Examiner does not actually perform any monitoring.

Finally, the Applicant notes that the motivation suggested by the Examiner to justify the proffered modification and combination is merely a reiteration of the Applicant's disclosure. As the Examiner cited no authority and none is seen in the cited references, this of course is a classic instance of impermissible hindsight reasoning.

In view of the foregoing, the Examiner's rejections of the claims are believed to be overcome.

Additional Fees

The Commissioner is hereby authorized to charge any insufficiency, including a \$525 three-month extension fee, or credit any overpayment associated with this application to Bingham McCutcher LLP Deposit Account No. 50-4047 (order no. 4247070002).

Conclusion

Claims 1, 2, 4, 8, 9, 12-16, 19, 20, and 22 have been amended. Claims 1-22 are pending in the application, and are believed to be in condition for allowance. In view of the foregoing, all of the Examiner's rejections of the claims are believed to be overcome. The Applicants respectfully request reconsideration and issuance of a Notice of Allowance for all claims. Should the Examiner feel further communication would help prosecution, the Examiner is urged to call the undersigned at the telephone number provided below.

Respectfully Submitted,



Sean P. O'Hanlon
Reg. No. 47,252

Dated: July 24, 2008

Bingham McCutcher LLP
2020 K Street, NW
Washington, DC 20006
(202) 373-6029